IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 05.01.2007

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice N.PAUL VASANTHAKUMAR

Writ Appeal No.432 of 2003

R. Santhanam ... Appellant

vs.

1. Madura Coats Ltd.,
Tuticorin, rep. by its Industrial
Relations Manager.

2. The Presiding Officer,
Additional Labour Court,
Madurai. ... Respondents

Appeal under Clause 15 of the Letters Patent as against the order of this Court, dated 21.01.2000, made in W.P. No.9006 of 1992 praying under Article 226 of the constitution of India to issue a writ of Certiorari calling for the records connected wih I.D.No.282 of 1989 on the file of the Presiding Officer, Addl. Labour Court, Madurai and quash the Award dt. 6.3.92 in so far as relief to the workman in concerned.

For Appellant : Mr.N.G.R.Prasad
for M/s.Row & Reddy.
For Respondent-1 : Mr.Kumaresan,
for M/s.Ramasubramaniam
Associates.

(Judgment of the Court, delivered by P.SATHASIVAM, J.)

The above Appeal is directed against the order of the learned single Judge, dated 21.01.2000, made in W.P. No.9006 of 1992, in and by which, the learned Judge allowed the Writ Petition filed by the Management.

2. The workman/appellant herein, viz., R.Santhanam, was employed as a Junior Electrician in the Electrical Department of the first respondent / Madura Coats Limited, Tuticorin. According to the Management, on 12.02.1988, he was directed by his superior to rectify

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the electrical defects in three Hoists. Each one of the hoists has more than one door lock switch. If the door look switches are not in their places, the doors of the hoists will not get locked but would remain opened and if the hoist is operated in such a condition, accidents are likely to happen. According to the Management, it is the duty of the Mechanic Shop Fitter to remove the door locks in case there is any mechanical defect. The workman is in no way connected with the door lock switches. Further, whoever removes the door lock switches in the hoists, he should display a warning sign board in the hoists. The workman was instructed by the the Junior Engineer of the Electrical Section to attend to the electrical defects in those three hoists and if necessary to get the assistance from the Mechanic Shop Fitter. According to the Management, the workman, instead of getting the assistance of the Mechanical Shop Fitter for removing the door lock switches, had himself removed the same. When it was noticed and he was asked to re-fix the door lock switches back in the hoists, the workman refused to carry out the job. The act of the workman, according to the Management, constituted a serious act of misconduct, hence, a show cause notice dated 12.02.1988 was issued. The workman submitted his explanation. Not satisfied with the same, enquiry was conducted. Finally, the Enquiry Officer submitted his findings on 29.06.1988 holding that the charges levelled against the workman are proved. The Management accepted the findings of the Enquiry Officer and issued a second show cause notice, dated 15.07.1988, requiring the workman to submit his explanation for the proposed punishment. He submitted his explanation on 21.07.1988 and 24.08.1988. As the explanation was not satisfactory, by order dated 05.09.1988, the workman was dismissed with effect from 05.09.1988.

3. Aggrieved by the order of dismissal, the workman raised an industrial dispute in I.D. No.282 of 1989 on the file of the Additional Labour Court, Madurai. No oral evidence was let in on the side of the workman and the Management, however, documents M1 to M52 were marked on the side of the Management. The Labour Court, after analysing the materials, concluded that the enquiry was fair and proper, however, after finding that the Workman had rendered unblemished service for 12 years, by concluding that the punishment of dismissal is disproportionate to the charges against the workman, modified the same by ordering reinstatement without backwages. Not satisfied with the reduction of punishment, the Management filed W.P. No.9006 of 1992. The learned single Judge, accepting the case of the Management, quashed the award of the labour court in modifying the punishment, hence, the present Writ Appeal by the workman.

4. Heard learned counsel for the appellant-workman as well as the first respondent-Management.

5. In view of the fact that the Writ Petition and the Writ Appeal relate to the only aspect viz., modification made by the

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Labour Court in the punishment imposed by the Management, there is no need to traverse into the factual details as stated in the affidavit. We have already stated that the Labour Court, after considering the relevant materials, concluded that the enquiry was fair and proper. After holding so, taking note of the fact that the workman had put in unblemished service for a period of 12 years with the Management and finding that the dismissal is unwarranted, the Labour Court ordered for reinstatement, making it clear that the workman would not be entitled to the entire backwages from the date of dismissal till the date of reinstatement.

6. Mr.N.G.R. Prasad, learned counsel appearing for the appellant/workman, submitted that, in view of the Standing Orders, it is the duty of the Management, while awarding punishment, to consider the gravity of the misconduct as well as the past service record of the workman. According to him, since the Management did not consider the same; and the Labour Court, after adverting to the Standing Order and the long service (12 years) put in by the workman without any complaint or enquiry, properly exercised its discretion and modified the punishment; in the absence of any contra material, the learned Judge is not justified in setting aside the same. He also contended that the learned Judge has not at all discussed and adverted to the Standing Order before accepting the case of the Management.

7. It is not in dispute that the Labour Court is clothed with the powers to reappraise the evidence and come to a different conclusion and that, in appropriate cases, the Labour Court can impose a lesser punishment even if the domestic enquiry is held to be proper. The charge against the workman was one of insubordination. It was charged that he removed the door lock switches in the hoists, did not display warning sign boards and refused to re-fix the lock switches when instructed. The workman has highlighted that the charge sheet dated 12.02.1988 was served on him and thereafter a complaint, dated 13.02.1988, from the Junior Engineer was obtained. Not satisfied with the explanation, domestic enquiry was conducted and, based on the Enquiry Officer's Report, he was removed from service with effect from 05.09.1988. By Award dated 06.03.1992, the Labour Court, after examining the enquiry proceedings and taking note of the 12 years of unblemished service put in by the workman and also non-consideration of the past service record of the workman by the Management, reduced the punishment of dismissal to that of reinstatement however without backwages. As rightly pointed out by the learned counsel for the appellant, the learned Judge unfortunately reappraised the evidence and came to a different conclusion and proceeded as if an appellate court/authority. In fact, the learned Judge has not considered either sub clause-5 of Clause-21 of Certified Standing Orders or past record of service. Sub-clause-5 of Clause-21 of Certified Standing Orders mandates that it is the duty of the Management while imposing punishment to consider gravity

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of the misconduct as well as his past record of service. As rightly pointed out by the learned counsel for the workman, the Management ignored the said clause while imposing the punishment and the same was rightly considered by the Labour Court. Learned counsel appearing for the Management heavily relied on a judgment of the Supreme Court reported in (2006) 1 SCC 430 (Hombe Gowda Educational Trust vs. State of Karnataka) and contended that the Labour Court is not justified in interfering with the award of punishment in a case of 'proved misconduct'. We verified the Judgment of the Supreme Court and it relates to the conduct of a workman in an Educational Institution. In our humble view, the said Judgment cannot be strictly made applicable to the case on hand in view of the factual aspects adverted to by us. We are conscious of the fact that interference by the Labour Court as well as this Court with the award of punishment is very limited. However, it is not in dispute that Section 11-A of the Industrial Disputes Act had advisedly left a wide discretion in the Labour Court or the Tribunal. While considering the relief, the Labour Court has to take into account various mitigating circumstances. In the case on hand, the Labour Court recorded a finding that, in the totality of circumstances, the charges proved do not warrant the extreme punishment of dismissal, and exercised the discretion properly and judiciously after taking note of all such relevant factors into consideration as are required by law. It also took note of the fact that the workman had put in unblemished service for a long period of 12 years and ultimately modified the punishment of dismissal into reinstatement without backwages from the date of dismissal till reinstatement. In our opinion, in view of sub-clause(5) of Clause-21 of Certified Standing Orders, which was ignored by the Management, and considering 12 years of unblemished service of the workman, there is no error on the part of the Labour Court in modifying the punishment. We are satisfied that the Labour Court, only after taking the relevant facts and the mitigating circumstances of the case into consideration, reduced the punishment to that of reinstatement without backwages instead of dismissal. We are satisfied that there was no error apparent on the face of the Award or the proceedings of the Labour Court warranting any interference in exercise of the writ jurisdiction by the learned single Judge. We are unable to subscribe to the view of the learned Judge and, in our considered opinion, the award of the Labour Court does not merit any interference at all.

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Consequently, the order of the learned Judge, dated 21.01.2000, made in W.P. No.9006 of 1992, is set aside. Writ Appeal is allowed. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

JI.

To

1.The Presiding Officer, Additional Labour Court,Madurai.

2.The Record Keeper,
VR Section, High Court, Madras.

+1cc to M/s. Row & Reddy, Advocate Sr 1236

+1cc to M/s. Ramasubramaniam & Associates SR 1750

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km/23.1.

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